

**NAGARI LAW REVIEW**

ISSN (Print) : 2581-2971 | ISSN (Online) : 2597-7245

Available at : <http://nalrev.fhuk.unand.ac.id/>

# Protection on Free-to-Air Content in Indonesia

*Caisha Aamuliadiga*<sup>1\*</sup><sup>1</sup> University of Indonesia, Jakarta, Indonesia, 10440\* Corresponding author's e-mail : [caisha.aamuliadiga91@ui.ac.id](mailto:caisha.aamuliadiga91@ui.ac.id)

ARTICLE INFO	ABSTRACT
<p><b>Keywords :</b> Copyright; Subscription-based Broadcasting Institution; Private Broadcasting Institution.</p> <p><b>How To Cite :</b> Aamuliadiga, C. (2021). Protection on Free-to-Air Content in Indonesia. Nagari Law Review, 4(2), 131-141.</p> <p><b>DOI :</b> <a href="https://doi.org/10.25077/nalrev.v.4.i.2.p.131-141.2021">10.25077/nalrev.v.4.i.2.p.131-141.2021</a></p>	<p>This research is about protection on free-to-air content in Indonesia. The existence of the protection has been debatable. Utilizing of free-to-air content by subscription-based broadcasting institution without consent of the owner is ubiquitous in Indonesia. The owner of the content filed lawsuit to the court and reported them to police institution. Government institutions do not have unanimous view on the protection. This research explores how it is protected through Law Number 28 of 2014 on Copyright and Law Number 32 of 2002 on Broadcasting as well as how it is implemented Indonesia. For further explanation, this research also reviews Constitutional Court Decision Number 78/PUU-XVII/2019. The Constitutional Court give their insight in the reasoning of decision. As a result, both regulations do not give clear protection of free-to-air content and Constitutional Court decision make the protection clear through the decision.</p> <p>©2021 NALREV. Faculty of Law Universitas Andalas</p>

## 1. Introduction

Despite Law Number 28 of 2014 on Copyright (hereinafter “Copyright Law”) Republic of Indonesia protects economic right of copy right and neighbouring rights owner, free-to-air protection existence has been debatable. Experts and government institutions do not have unanimous view on this.

National Coordination Meeting of Indonesia Broadcasting Commission (Komisi Penyiaran Indonesia/KPI) officially recommended that free to air broadcasting is free for Subscription-based Broadcasting Institution (*Lembaga Penyiaran Berlangganan/LPB*).<sup>1</sup> This recommendation means that LPB have the right to freely relay or rebroadcast content from Private Broadcasting Institution (*Lembaga Penyiaran Swasta/LPS*). The meeting proclaimed that LPB do not need to have consent from LPS to broadcast the content.

This view is supported by broadcasting law expert from University of Hasanudin who is also former chairman of KPI, Judhariksawan. According to him, free relay is needed by a great number of populations living in isolated area. This is arguably due to many populations living in isolated, border, or outer area who cannot access free-to-air program from private broadcasting institution. According to him, the existence of LPB assists the spread of information to them.<sup>2</sup>

<sup>1</sup> Komisi Penyiaran Indonesia. (2019) *Rekomendasi Rakornas KPI 2019*. Available from <http://www.kpi.go.id/index.php/id/umum/38-dalam-negeri/35055-rekomendasi-rakornas-kpi-2019>. Accessed July 9, 2020

<sup>2</sup> Diah Dayanti. (2019). *Guru Besar UNHAS Makassar Dukung Hasil Rakornas KPI: Siaran Free To Air di LPB penting untuk pemerataan informasi*. Available from <https://rri.co.id/jakarta/nama-peristiwa/732206/guru-besar-unhas-makassar-dukung-hasil-rakornas-kpi-siaran-free-to-air-di-lpb-penting-untuk-pemerataan-informasi>. Accessed on 9 July 2020

On the other side, Police Institution still see this as violation of Copyright Law. As a result, they investigate LPB owner who broadcast free-to-air content without consent and seal their office. This incident happened to Wafa TV in Central Java, Indonesia.<sup>3</sup>

Discourse pertaining to the protection of free-to-air content has been raised from the dispute between LPB and LPS. LPB allegedly downlink the content of LPS in illegal way. This happen while LPS uplink their content to satellite before it is broadcasted to audience through LPS representative office. Before broadcasting to audience, LPS representative office need to downlink the content from satellite. The downlink process is also done by LPB to broadcast LPS content to LPB's audience.

LPB insist that what they do is due to their obligation under Law Number 32 of 2002 on Broadcasting (hereinafter "Broadcasting Law"). As it can be seen on Article 26 that, while doing their business, LPB shall provide at least 10% of channel capacity to broadcast content from Public Broadcasting Institution (*Lembaga Penyiaran Publik/LPP*) and LPS. However, Article 26 does not clearly explain the meaning of "provide at least 10% of channel capacity".

Viewing from broader framework, such conduct is supported by constitution. Article 33 Constitution of Republic of Indonesia regulate that essential natural resource is managed by state for the sake of public interest and not to be commercialized. This view can be concluded from Article 33 paragraph (2) of The Constitution regulating that sectors of production which are pivotal for the country and affected the life of the people shall be controlled by government and paragraph (3) constituting land, water, and natural resource contained therein shall be controlled by state and exploited to the greatest benefit of the people.

LPB argue that LPS broadcast free-to-air content through radio frequency which is part of natural resource under Article 33 of the constitution. Hence, free-to-air content should be free and could not be commercialized.

The question is, do radio frequency become a part of essential natural resources protected by Article 33 of The Constitution? Broadcasting Law do not explicitly mention if radio frequency become as part of pivotal natural resources.

Nevertheless, explanation of Broadcasting Law mention that the act was arranged for the purpose, *inter alia*: 1) broadcasting shall give equity and democracy by balancing right and obligation of people and society, including human right of every individual by respecting and not disrupting another right, and 2) broadcasting have a close relation with radio frequency and geostationary satellite orbit which is limited natural resource, hence its usage shall be regulated.

On the contrary, penalty is still imposed by court to LPB because of transmitting LPS content. District Court of West Jakarta imposed Jemy Penton and Rahadi Purnama Arsyad two years prison and fined Rp500.000,00. They two were not penalized. Judges viewed them transmitting illegal information and/or document which was owned by other.

This paper analyses the protection of related right in Indonesia and its relation to free-to-air content. The analysist will consider the Copy Right Law, Broadcasting Law and other regulations related to this issue, in national or international basis.

In Addition, this paper also shows how related right on free-to-air content law implemented. We will elucidate Indonesian court decisions about free-to-air content protection. From this, we can see the consistency between regulation and implementation.

Therefore, this article answers the following questions: how actually Indonesia do protect related right in free-to-air content from LPS? From such protections, how is it implemented?

<sup>3</sup> Constitutional Court of Republic of Indonesia. (2019) Trial Number 78/PUU-XVII/2019 Minutes of Meeting dated on 24 February 2020. p. 6

## 2. Method

This is normative research. To answer the issue, this research use literature study to explore the protection of free-to-air content. Secondary data used in this research are Broadcasting Law, Copyright Law, and court decisions. To support the data, this research also analyses information and view from earlier-related research and media.

## 3. Regulatory Framework on Copy Right in Broadcasting Industry

### 3.1. Copy Right Protection of Broadcasting in Copy Right Law

Black's Law Dictionary defines copyright as:<sup>4</sup>

*"1. The right to copy; specifically, a property right in an original work of authorship (including literary, musical, dramatic, choreographic, pictorial, graphic, sculptural, and architectural works; motion pictures and other audiovisual works; and sound recordings) fixed in any tangible medium of expression, giving the holder the exclusive right to produce, adapt, distribute, perform, and display the work. 2. The body of law relating to such works"*

In several languages, copyright is referred to as author's right. The expression of copyright refers to the act of copying an original work which, in respect of literary and artistic creations, may be done only by the author or with the author's permission. Meanwhile, authors right refer to the creator of an artistic work, its author, thus underlining that authors have certain specific rights in their creations that only they can exercise, which are often referred to as moral rights referred to as moral rights.<sup>5</sup>

Copyright require the product of the work to be intangible since it only protects the expression of work. Such expression can be literary works, computer programs, films, musical compositions, choreography, artistic works, architecture, advertisements, maps, and technical drawings.<sup>6</sup> Article 2 par (2) of Berne Convention ask countries not to protect works in their legislation unless they have been fixed in material form. Hence, the unexpressed idea, methods of operation or mathematical concept cannot be protected under copyright.<sup>7</sup>

In majority of countries, copyright protection is obtained automatically as the artist or author publish their creation.<sup>8</sup> This is known as declarative principle. The artist or author do not need to register their creation. Registration is only needed, in most countries, to help solving disputes over ownership or creation, as well as facilitate financial transactions.<sup>9</sup> Some said that the role of registration on copyright plays tradition functions in facilitating the exercise of the rights, proving the existence of the work and/or its ownership. At This context, registration is used to address problems of copyright, including the work where the owner cannot be identified or located, known as orphan works.<sup>10</sup> Nevertheless, registration do not function as proof of the author right.

WIPO, along with copyright, also recognized neighbouring, or also known as related, right. Neighbouring right have close relation with copyright. Neighbouring right is created for three categories of people **who are not technically authors**, those are: performing artist, producers of

<sup>4</sup> Garner, Bryan A. (Ed). (2009). *Black's Law Dictionary: Ninth Edition*. Dallas: West. Pg. 386

<sup>5</sup> WIPO. (2016) *Understanding Copyright and Related Rights*. Geneva: WIPO. Pg. 4

<sup>6</sup> WIPO. (2020). *Copyright*. Available online from: <https://www.wipo.int/copyright/en/> (Accessed on September 10, 2020)

<sup>7</sup> *Ibid*.

<sup>8</sup> See Article 2 par (2) Berne Convention

<sup>9</sup> WIPO. (2020). *Copyright*.

<sup>10</sup> WIPO. *Copyright Registration and Documentation Systems*. Available online from: [https://www.wipo.int/copyright/en/activities/copyright\\_registration/index.html](https://www.wipo.int/copyright/en/activities/copyright_registration/index.html) (Accessed on December 23, 2020)

phonograms, and those involved in radio and television broadcasting.<sup>11</sup> Neighbouring right protect the interest of the persons who contribute to develop the creation by expression of creativity or skills.<sup>12</sup>

To make the distinction between copyright and neighbouring right clear, let me show you the right of a song as an example. Every song has two basic types of copyrights attached to it. One is for the composition of the song and another is for the recording of the song. Neighbouring right benefit the owner (the singer) royalty due to the sound recording copyright holder.<sup>13</sup>

Both copyright and neighbouring right have been adopted in Indonesia through Law Number 28 of 2014. Regarding the creation of broadcasting organization, it is protected under neighbouring right.<sup>14</sup>

According to Copy Right Law, broadcasting organization have economic right. Such right include enjoying, authorizing, or prohibiting third party to:<sup>15</sup>

- a. Rebroadcast of a broadcast;
- b. Communicate of a broadcast;
- c. Fixation of a broadcast; and/or
- d. Reproduction of a broadcast fixation

Such article is adopted from international regulations as follow:<sup>16</sup>

- a. Berne Convention for the Protection of Literary and Artistic Works (“Berne Convention”);
- b. Agreement on Trade-Related Aspects of Intellectual Property (“TRIPS Agreement”);
- c. International Convention for The Protection of Performers, Producers of Phonograms and Broadcasting Organisations (“Rome Convention 1961”)

Indonesia has ratified Berne Convention through Presidential Decree Number 18 of 1997. In Berne Convention, the related right of broadcasting institution is introduced on Article 11bis. Article 11bis stipulate that the author has the exclusive right of authorizing:

- a. Broadcasting of their works or the communication to public;
- b. Any communication to the public by rebroadcasting of the broadcast of the work, when this communication is made by an organization other than the original one;
- c. The public communication by loudspeaker or any other analogous instrument transmitting sound or images of the broadcast.

TRIPS strengthen the protection of intellectual property right. TRIPS is one of the main agreements comprising the World Trade Organisation (“WTO”) Agreement. Hence, all WTO members are mandatory to apply TRIPS Agreement.<sup>17</sup>

The TRIPS Agreement introduced global and minimum standard from the protection of intellectual property rights and its enforcement. TRIPS agreement requires all WTO members to adjust their law

<sup>11</sup> The European Space Agency. (2020). *About Copyright and Neighbouring Right*. Available from [https://www.esa.int/About\\_Us/Law\\_at\\_ESA/Intellectual\\_Property\\_Rights/About\\_copyright\\_and\\_neighbouring\\_rights](https://www.esa.int/About_Us/Law_at_ESA/Intellectual_Property_Rights/About_copyright_and_neighbouring_rights) (Accessed on September 10, 2020)

<sup>12</sup> B.A.R.R. Ariyaratna and W.A. Sanath Sameer Wijesinghe. (2018). Protecting Copyrights and Related Rights in the Digital Dilemma: Some Challenges. *Journal of Business Management and Economic Research*. Vol. 2, Issue. 1, 2018, Pg 45. Doi: 10.29226/TR1001.2018.20

<sup>13</sup> Royalty Exchange. (2017). *What are Neighboring Rights?*. Available from <https://www.royaltyexchange.com/blog/what-are-neighboring-rights> (Accessed on September 10, 2020)

<sup>14</sup> See Article 20 of Copy Right Law

<sup>15</sup> See Article 25 of Copy Right Law

<sup>16</sup> Constitutional Court of Republic of Indonesia. (2019) Trial Number 78/PUU-XVII/2019 Minutes of Meeting dated on 24 February 2020. p. 16

<sup>17</sup> WTO. (2010). Frequently Asked Questions: Trade Related Aspects of Intellectual Property Rights (TRIPS). Available online from <http://wtocentre.iift.ac.in/FAQ/english/TRIPS.pdf> (Accessed on December 23, 2020)

to the minimum standard of IPR protection.<sup>18</sup> Indonesia has become member of WTO since 1 January 1995.

### 3.2. Copy Right Protection in Broadcasting Law

Law Number 32 of 2002 on Broadcasting (hereinafter “Broadcasting Law”) was introduced on the same year with previous copy right law (Law Number 19 of 2002 on Copyrights). It means, Broadcasting Law might not keep up with recent copyright law development.

However, Broadcasting Law protect the copy right implicitly. Such protection can be seen on Article 43 of Broadcasting Law. According to the article, any program broadcasted shall have broadcast right. While airing broadcast content, broadcasting organization shall pose the right and clearly be informed. Broadcast right from every broadcast content is protected under applicable regulation.<sup>19</sup>

Explanation of Article 43 elucidate the meaning of broadcast right. Pursuant to the explanation, broadcast right is the right owned by broadcasting organization to air certain programs or events obtained from the owner of the copyrights or its creator.

Anyone violating Article 43 par (2) shall be liable to administrative sanctions. The administrative sanctions may comprise: a) written reprimands; b) temporary suspension of problematic programs after a certain stage; c) limitation on broadcast duration and time; d) administrative fines; e) freezing of broadcasting activities for a certain period of time; f) no renewal of broadcasting operations license; g) revocation of broadcasting operations license.

Dispute between LPB and LPS raise while interpreting Article 26 par (2) letter b. According to it, LPB shall provide at least 10% of channel capacity to air programs from LPP and LPS. At a glance, Article 26 par (2) letter b Broadcasting Law seem to be negating the protection of copy right on broadcasting content. This article also become justification from LPB to insist that transmitting LPS content is applying the mandate of regulation.

LPB argue that the obligation to provide 10% of channel capacity give them right to broadcast LPS content as long as they have broadcasting license<sup>20</sup> (*izin penyelenggaraan penyiaran*). In LPB’s mind, broadcasting license including the right to air LPS Content. As LPB have the broadcasting license, they insist that they have the right to broadcast free-to-air content without any permission from the owner. From this, it can be seen that LPB extend the phrase broadcasting license as “broadcast right” (*hak siar*).

However, further elucidation of broadcast right term can be seen on Ministry of Communication and Information Regulation Number 41 of 2012 on Application of Broadcasting from Subscription-based Broadcasting Organization through Satellite, Cable, and Terrestrial. Article 1 number 9 of The Regulation enlighten that broadcast right is title which is given by content provider through cooperation agreement to subscription-based broadcasting organization which have license to provide broadcasting service to its consumer.

Another justification stated by LPB why They broadcast LPS content seems to be philosophical and does not have clear legal basis. On Focus Group Discussion (“FGD”) held on Tuesday, 8 October 2019, *Aliansi Layanan Media Indonesia* (Media Service Alliance of Indonesia/“ALAMI”) claimed that the role

<sup>18</sup> WHO. (2020). *WTO and The Trips Agreement*. Available online from [https://www.who.int/medicines/areas/policy/wto\\_trips/en/](https://www.who.int/medicines/areas/policy/wto_trips/en/) (Accessed on December 23, 2020)

<sup>19</sup> See Article 43 of Broadcasting Law

<sup>20</sup> Accordig to Article 1 number 14 Broadcasting Law, broadcasting license means the rights granted by the state to the broadcasting institution to operate broadcasting.



of LPB airing LPS content is for the sake of national integration, community service, and local development.<sup>21</sup>

According to ALAMI, LPS contents broadcasted by LPB are not well delivered by people living in undeveloped and border area. Such citizens have the right of obtaining information as stipulated on Article 28F Constitution of Republic of Indonesia, Article 19 Universal Declaration of Human Right, and Article 19 International Covenant on Civil and Political Right. While LPB broadcast LPS content, they are assisting government to fulfil human right living in undeveloped and border area.<sup>22</sup>

The phrase free to air is commonly misunderstood by many people, including LPB. They think that free-to-air content become public domain as it is aired. It is argued that LPS utilize radio frequency

which become natural resource owned by common. As LPS utilize natural resource, anyone having broadcasting license from government is permitted to rebroadcast free-to-air content from LPB.

Nevertheless, free-to-air means people have access to access content free of charge. Free-to-air services are the broadcasting services that are delivered via radio frequencies without direct fee to service provider.<sup>23</sup> End consumer have the right to access free-to-air content.

#### **4. Application of Copy Right in Broadcasting Industry**

##### **4.1. District Court Decision of West Jakarta Number 959/PID.Sus/2019/PN.Jkt.Brt**

District Court Decision of West Jakarta Number 959/PID.Sus/2019/Pn.Jkt.Brt is criminal judgement on Jemy Penton and Rahadi Purnama Arsyad. Both of them were sent to the court because of their activity transmitting LPS content through their LPB, PT Ninmedia Indonesia, Tbk.

Audiences of free-to-air from four LPS Channels (RCTI, MNC TV, GTV and i-News) received the content directly from Satellite Palapa. The four LPSes produced their content then uplink their signal to Satellite Palapa before it is received by audiences. Audiences received the signal through receiver which is known as Parabola C-Band or widely known as radio antenna. This signal only could be obtained by receiver as long as it is aimed to Satellite Palapa. The connected radio antenna to television lead audiences to enjoy free-to-air content.

The alike process of receiving signal from Satellite Palapa via radio antenna is also done by PT Ninmedia Indonesia, Tbk . The received signal is then processed broadcast centre before it is retransmitted by satellite from Indosat to Satellite Chinasat 11. Subsequently, the audiences or subscriber of PT Ninmedia Indonesia, Tbk could enjoy the content retransmitted to Satellite Chinasat 11 through receiver such as parabola antenna, ku band LNB, coaxial cable and digital receiver purchased from official partner or distributor PT Ninmedia. The process of retransmission to subscribers was done without permission by the four LPSes.

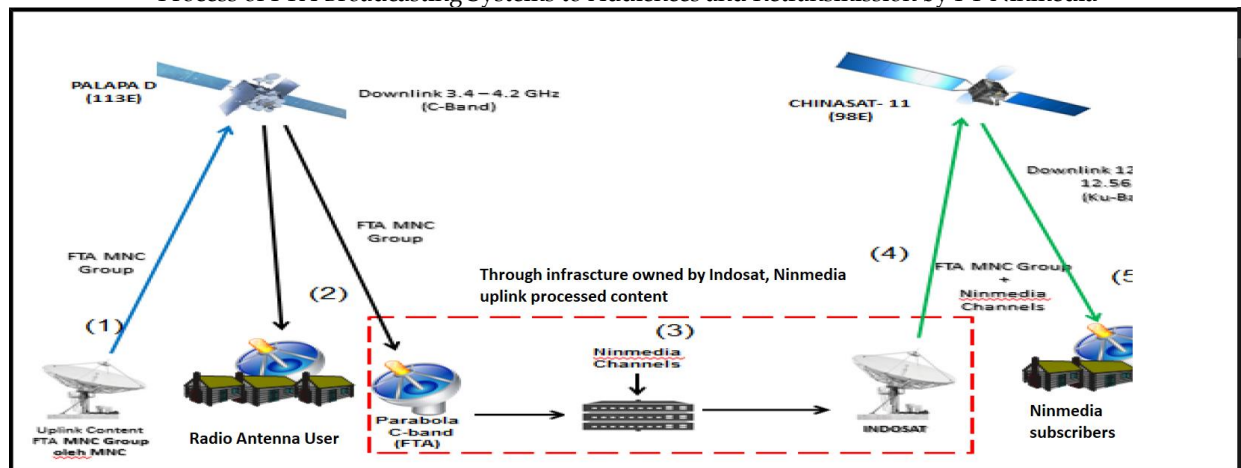
<sup>21</sup> Alami, *Deklarasi Alami dan FGD Bahas kewajiban LPB Menyiarkan Siaran Free to Air*, Available from Royalty Exchange. (2017). *What are Neighboring Rights?*. Available from <https://alami.or.id/2019/10/10/deklarasi-alami-dan-fgd-bahas-kewajiban-lpb-menyiarkan-siaran-free-to-air/> (Accessed on October 30, 2020)

<sup>22</sup> *Ibid.*

<sup>23</sup> Amal Punchihewa, (2014), *FTA is Here to Stay for Awhile*, Available from [https://www.researchgate.net/publication/264315639\\_Free\\_To\\_Air\\_FTA\\_is\\_here\\_to\\_stay\\_for\\_a\\_while/citation/download](https://www.researchgate.net/publication/264315639_Free_To_Air_FTA_is_here_to_stay_for_a_while/citation/download) (Accessed December 24, 2020)

Illustration 4.1

Process of FTA Broadcasting Systems to Audiences and Retransmission by PT Ninmedia



Source: District Court of West Jakarta Decision Number 959/PID.Sus/2019/PN.Jkt. Brt (edited)

For clearer explanation, see illustration 4.1 above.

Due to this conduct, public prosecutor accused Jemy Penton and Rahadi Purnama Arsyad as the owner of PT Ninmedia with alternative charge. First, their activity was accused of violating Article 32 par (1) jo. Article 48 par (1) Law Number 19 of 2016 on Revision of Law Number 11 of 2008 on Electronic information and transaction or Second, article 25 par (2) letter a jo Article 118 Copyright Law.

In theory, alternative charge is used while public prosecutor is not sure of which article is violated by the defendant. Alternative charge is a “safe” way for prosecutor because its application is relied on judge’s view. Prosecutor charges defendant with any possible article which is violated. Generally, the set of charge contains a main charge (which is usually serious charge) followed by alternative or ‘backup’ charge (which are usually less serious).<sup>24</sup>

In this case, the first charge indicted by prosecutor was violation of Electronic Information and Transaction Law then followed by Copyright Law as alternative charge. From this, it clearly can be seen that Electronic Information and Transaction Law was considered as the main violation and Copyright law as ‘backup’. This fact shows us that prosecutor was not so sure that if it was violation of copyright law.

The decision of the trial is Jemy Penton and Rahadi Purnama Arasyad violated Electronic Information and Transaction Law. In the consideration, judges said that the most appropriate charge of defendant’s deed is article 32 par (1) jo Article 48 par (1) Electronic Information and Transaction Law. The activity of transmitting LPS on LPB without permission is considered as Electronic Information and Transaction Law violation, not Copyright Law.

#### 4.2. Commercial Court Decision of Central Jakarta Number 32/Pdt.Sus-Hak Cipta/2019/PN.Niaga.Jkt.Pst.

Commercial court decision number 32/Pdr.Sus-Hak.Cipta/2019.PN.Niaga.Jkt.Pst is intellectual property dispute between between PT Rajawali Citra Televisi Indonesia (“**RCTI**”) against PT Nadira Intermedia Nusantara, PT Ninmedia Indonesia, Jemy Penton, Iziddin Musawa, Jimm Suhendra, and Rahadi Purnama Arsyad, Agus Julianto Sunjoto, Agus Muctadin, and F.M. Fairy Soedarsono. This

<sup>24</sup> Ugur Nedim, Proving Criminal Charges: Main and Alternative Charges, Available on <https://nswcourts.com.au/articles/proving-criminal-charges-main-and-alternative-charges/>, (Accessed on 18 December 2020)

decision is private enforcement of District Court Decision of West Jakarta Number 959/PID.Sus/2019/Pn.Jkt.Brt. Even though it is case concerning to private dispute about copyright, the decision could not give clear explanation about the status copyright on free-to-air content.

In their claim, plaintiff argued that the defendants illegally rebroadcast their content without permission and keep doing it even the defendants had been warned. Plaintiff asked judges to decided that the defendants had violated Article 25 par (2) and (3) Copy Right Law.

However, judges decided that such claim is inadmissible. The admissible is given because plaintiff sued the wrong subjects. Plaintiff sued the company as well as its managements. According to Law Number 40 of 2007 on Limited Liability Company, limited liability company is accepted as legal subject. Hence, any party do not need to include management of company as defendant in their claim.

In pursuant to jurisprudence, the parties who are able to be determined as defendant shall be referred to Supreme of Court Decision Number 047 K/Pdt/1988 dated on 20 January 1983. Such decision stated that director of limited liability company can not be sued, but the company itself.

Inadmissible decision does not examine the substance of plaintiff's claim. It only verifies formal aspects of the claim. Therefore, there is no legal explanation of copy right on free-to-air content can be inferred from this decision.

#### 4.3. Constitutional Court Decision Number 78/PUU-XVII/2019

Constitutional Court ("MK") has the authority to review act toward Constitution of Republic of Indonesia. If an act contravenes the constitution, MK has the power to nullify such act. MK decision number 78/PUU-XVII/2019 review Article 32 par (1) Electronic Information and Transaction Law and Article 25 par (2) letter a Copyright Law toward Constitution of Republic of Indonesia filed by PT Nadira Intermedia Nusantara.

Article 25 par (2) letter a Copyright Law state that economic right of Broadcasting Organization includes enjoying, giving permission, or forbidding third party to rebroadcast their content. On the other hand, the applicant, in their own opinion, has the right to broadcast LPB and LPS freely because they pose broadcasting license. In addition, applicant, as mandated by Broadcasting Law, has obligation to provide at least 10% (ten percent) of channel capacity to broadcast content from LPP and LPS. Article 25 par (2) complicate the applicant to enjoy their right and practice their obligation

In the reasoning of the decision, MK viewed Article 25 par (1) Copyright Law as economic right protection. If it is not protected, legal certainty is at stake. The economic right will not be protected if broadcasting license become justification for LPB to broadcast free-to-air content without consent.<sup>25</sup>

Furthermore, MK stated that the obligation to allocate 10% of channel capacity do not mean automatically give the right for LPB to broadcast free-to-air content without consent of the owner. The solution of this issue can be seen on Article 41 of Broadcasting Law. Article 41 tell that broadcasting organizations can cooperate each other to broadcast common content as long as they do not monopolize information and public opinion. Through cooperation, MK viewed that Broadcasting Law have given clear explanation what LPB should do to provide 10% of channel capacity.<sup>26</sup>

MK is fully aware that copyright is exclusive right rising based on declarative principle. Exclusive right give the owner authority to enjoy such right. In other word, no one is allowed to enjoy the creation without the consent of the owner.<sup>27</sup>

In MK's view, Article 25 par (2) Copyright Law do not violate the Applicant's right to seek, obtain, own, store, process, and convey information by employing the available means. The right to deliver

<sup>25</sup> Constitutional Court of Republic of Indonesia. (2019) Decision Number 78/PUU-XVII/2019. p. 184

<sup>26</sup> *Ibid.*, p 185

<sup>27</sup> *Ibid.*



information shall comply with limitation as stipulated on Article 28J par (2) The Constitution of Republic of Indonesia.<sup>28</sup>

MK refused all of this application. Article 25 par (2) Copyright Law and Article 32 par (1) Electronic Information and Transaction Law do not contravene The Constitution of Republic of Indonesia.

## 5. Conclusion

State apparatus and institutions do not have same view on copy right of free-to-air content. KPI, police institution, public prosecutor, and judges do not have unanimous viewpoint on this.

Broadcasting Law and Copyright Law did not give clear protection to copyright on free-to-air content before case number 78/PUU-XVII/2019 was decided. Without MK decision, Broadcasting Law and Copyright Law give multi-interpretation

KPI has the view that LPS content is free to watch and rebroadcast to audience. By doing this, information is able to obtain by people living in outer and border area are. Moreover, KPI see this as implementation of the mandate to provide 10% of capacity channel.

On the contrary, police institution sees this from different point of view. Rebroadcasting without consent from copyright owner will be considered illegal. Many LPBs had been sent to criminal process.

On the other hand, prosecutor and judges are not sure if enjoying copyright on broadcasting law without permission violate Copyright Law. As alternative, prosecutor and judge prioritize Electronic Information and Transaction Law as tool to penalize defendants.

MK having authority to review act toward constitution decided that Article 25 par (1) Copyright Law do not contravene The Constitution of Republic of Indonesia. Even decision number 78/PUU-XVII/2019 reject the application, the reasoning of the decision explain the status of copyright protection on free-to-air content. The MK decision can be concluded as 1) any creation, including LPB content, shall be protected by government. This protection gives legal certainty, 2) the obligation to provide 10% of channel capacity shall be done by cooperation between LPB and LPB or LPP. LPB is not allowed to broadcast without consent of the owner, 3) broadcasting license is different from consent. Broadcasting license do not mean LPB has the right to freely rebroadcast LPB or LPP content.

## References

### Regulation

The Constitution of Republic of Indonesia

Law of The Republic of Indonesia Number 32 of 2002 on Broadcasting

Law of The Republic of Indonesia Number 28 of 2014 on Copyrights

Ministry of Communication and Information Regulation Number 41 of 2012 on Application of Broadcasting Organization through Satellite, Cable, and Terrestrial

Agreement on Trade-Related Aspects of Intellectual Property

Berne Convention for the Protection of Literary and Artistic Works

International Convention for The Protection of Performers, Producers of Phonograms and Broadcasting Organisations

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<sup>28</sup> *Ibid.*, p. 188.

### Court Decision

Commercial Court Decision of Central Jakarta Number 32/Pdt.Sus-Hak Cipta/2019/PN.Niaga.Jkt.Pst.

Constitutional Court Decision Number 78/PUU-XVII/2019

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